

HERBERT DIAZ,  
Petitioner,  
vs.  
B. CURRY, Warden,  
Respondent.

## BACKGROUND

Order to Show Cause  
N:\Pro - Se\7.31.2007\06-06921 Diaz06912\_osc.wpd

1 instant federal habeas corpus petition on November 6, 2006.

2 **DISCUSSION**

3 A. **Standard of Review**

4 This court may entertain a petition for a writ of habeas corpus “in behalf of a  
5 person in custody pursuant to the judgment of a State court only on the ground that  
6 he is in custody in violation of the Constitution or laws or treaties of the United  
7 States.” 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district  
8 court shall “award the writ or issue an order directing the respondent to show cause  
9 why the writ should not be granted, unless it appears from the application that the  
10 applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243. Federal  
11 courts have a duty to construe pro se petitions for a writ of habeas corpus liberally.  
12 Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001).

13 B. **Claims**

14 Petitioner claims: (1) the BPT’s decision violation of petitioner’s state liberty  
15 interest in parole, an interest protected by his constitutional right to due process;  
16 (2) the BPT’s decision was not based on a reasonable determination of the facts  
17 insofar as the decision was not supported by sufficient evidence bearing an indicia of  
18 reliability; (3) the BPT’s decision violates due process because there was not  
19 sufficient evidence to indicate that he is a current and present danger to society; and  
20 (4) the BPT’s reliance on the facts of the commitment offense because the offense  
21 did not rise to the level of “egregiousness and callousness.” Liberally construed,  
22 these claims are cognizable. Accordingly, respondent is directed to SHOW CAUSE  
23 why the petition should not be granted.

24 **CONCLUSION**

25 For the foregoing reasons and for good cause shown,

- 26 1. The clerk of the court shall serve by certified mail a copy of this order

1 and the petition and all attachments thereto upon respondent and respondent's  
2 attorney, the Attorney General of the State of California. The clerk shall also serve a  
3 copy of this order on the petitioner at his most current address.

4 2. Respondent shall file with this court and serve upon petitioner, no later  
5 than **ninety (60) days** of the issuance of this order, an answer conforming in all  
6 respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a  
7 writ of habeas corpus should not be issued.

8 If petitioner wishes to respond to the answer, he shall do so by filing a  
9 traverse with the court and serving it on respondent no later than **forty-five (45)**  
10 **days** of his receipt of the answer. Should petitioner fail to do so, the petition will be  
11 deemed submitted and ready for decision **forty-five (45) days** after the date  
12 petitioner is served with respondent's answer.

13 3. Respondent may file, within **ninety (90) days** a motion to dismiss on  
14 procedural grounds in lieu of an answer, as set forth in the Advisory Committee  
15 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files  
16 such a motion, petitioner shall file with the court and serve on respondent an  
17 opposition or statement of non-opposition to the motion no later than **forty-five (45)**  
18 **days** of receipt of the motion, and respondent shall file with the court and serve on  
19 petitioner a reply no later than **fifteen (15) days** of receipt of any opposition.

20 4. It is petitioner's responsibility to prosecute this case. Petitioner must  
21 keep the court informed of any change of address by filing a separate paper with the  
22 clerk of the court headed "NOTICE OF CHANGE OF ADDRESS," and comply  
23 with any orders of the court within the time allowed or ask for an extension of that  
24 time. Failure to do so may result in the dismissal of this action for failure to  
25 prosecute pursuant to Federal Rule of Civil Procedure 41(b). See Martinez v.  
26 Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

1           5.       Petitioner is reminded that all communications with the court, whether  
2 by way of formal legal motions or informal letters, must be served on respondent by  
3 mailing a true copy of the document to respondent's counsel.

4  
5 DATED: July 31, 2007

  
JAMES WARE  
United States District Judge